Supreme Court, U.S.
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No. 94-531

In the Supreme Court Of the United States

October Term, 1994

STEVEN AUGUSTUS, ET AL.

Petitioners

VERSUS

STATE OF LOUISIANA, THROUGH ITS GOVERNOR, EDWIN EDWARDS, ET AL.

Respondents

On Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

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PETITIONERS REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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QUESTIONS PRESENTED

Whether respondents' briefs in opposition to *PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA* contain material misstatements of facts.

Whether the Supremacy Clause precludes a state from using bloated doctrines of sovereign and judicial immunity to refuse to recognize a cause of action for the return of money confiscated in violation of the Fourth, Fifth, and Fourteenth Amendments.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This reply involves Article VI, §2 of the United States Constitution, which states:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

MISSTATEMENTS OF THE CASE IN THE OPPOSITION BRIEFS

Respondents have filed two briefs in opposition to petitioners' application for a writ of certiorari. One brief, filed by Ms. Bowers on behalf of the State of Louisiana and all three judiciaries involved, will be referred to as the *State Brief*. The other brief, filed by the McGlinchey Law Firm on behalf of the Jefferson Parish Judges, will be referred to as the *McGlinchey Brief*. Both briefs make material misstatements of facts. For example, the State Brief (p.5) characterizes petitioners' first argument as a claim "that the entire Louisiana Judiciary is in some mysterious way unfair and tainted." Petitioners never alleged that there is anything *mysterious* about the state courts' failure to apply state law and the federal constitution to order the return of money unconstitutionally confiscated by the judiciary itself. However, petitioners cannot respond to each and every misstatement within the page limitations of Rule 33. Accordingly, petitioners will reply to seven material misstatements of the case by respondents.

Misstatement Of The Case No. 1: The State Brief claims that petitioners did not raise their federal constitutional issues in the state court proceeding.

Correction To Misstatement No. 1: Every federal constitutional issue raised in petitioners' writ application with this court was raised in their state court proceeding. Petitioners' federal constitutional claims involve the Fourth Amendment, Fifth Amendment, and the Fourteenth Amendment. The Court in Webb's Fab. Pharmacies, Inc. v. Beckwith, 449 U.S.

155,160fn5, 101 S.Ct. 446,449fn5 (1980), held that a Fifth Amendment claim had been raised where, although it was

> not entirely clear that the federal constitutional issue was presented to the Circuit Court . . . . the receiver's memorandum . . . . contains at least one reference to pertinent provisions of the Florida Constitution and its Federal counterpart.

Petitioners' state court petition and amended petition are reproduced in their entirety at Documents Lodged With Clerk By Respondents, Vol. 1, §A and §H respectively. **Petitioners' state court petition and amended petition contain the following language:**

"unconstitutional"	22 references
"unconstitutional seizure"	6 references
"42 USC § 1983"	4 references
"Constitution of the United States"	3 references
"unconstitutionally taken"	1 reference
"constitutional tort"	1 reference
"not a constitutionally valid charge"	1 reference
"due process"	4 references
"14th Amendment"	3 references
"4th, 8th, 14th Amendments"	1 reference
"equal protection clause"	1 reference
"extortion"	1 reference

Petitioners' state court petition and amended petition also contain the following language:

> "That the phrase or *any other claim* contained in LSA-R.S. 47:1481 is unconstitutional, in that said phrase violates the due process clauses of the Federal and State Constitutions in that said phrase is too general, vague and over broad to be understood by men of reasonable intelligence."

Petitioners' state court petition and amended petition also contain the following language:

"The Defendants . . . .have deprived Plaintiffs . . . by failing to provide a meaningful backward-looking relief to rectify the unconstitutional extortion of their monies; all while under the duress of a threat of jail;"

"Said monies and promises of money were coerced from each of the Plaintiffs and those similarly situated, by the Defendants, with the threat of Jail. The Defendants had full and actual power to execute such threat; and,"

"Plaintiffs and those similarly situated had no reasonable means of immediate relief except payment or a promise to pay. In fact and truth it was either pay or promise to pay or remain in jail;"

"That said fees imposed and promises extracted were absolutely void ab initio;"

"The monies and promises herein concerned were solely controlled and used by the defendant Judges, not for the benefit of the Plaintiffs or those similarly situated;"

"The payments made and the promises to pay given by the Plaintiffs, respectively, were done under the most severe compulsion and for the sole purpose of preventing immediate seizure and arrest of their bodies and persons;"

"Said monies and promises of money were actually, in fact and truth, received by the defendants and is, at this time, actually and physically in their control, being unlawfully and unconstitutionally withheld from your Plaintiffs and those similarly situated."

Misstatement Of The Case No. 2: McGlinchey Brief (p.2):

The district court maintained the exceptions of no cause of action, no right of action and prescription.

Correction To Misstatement No. 2: The Louisiana Fifth Circuit Court of Appeal (Appendix to Writ Application, p.A-8):

> Assuming *arguendo* that collection of such a fee is a tort, the trial judge concluded that the tort prescriptive period of one year would run from the commission of the tort--that is, the date the fee was paid--and that the filing of the federal court action had not interrupted the running of the prescriptive period. However, he did not state specifically that the claims herein had prescribed. He ruled instead that the defendant judges have an absolute judicial immunity for such an alleged tort and that the claim against the State for restitution is barred by state sovereign immunity

Petitioners state court petition (as amended) pled causes of action with prescriptive periods ranging from ten years to one year. See: *ASSIGNMENT OF ERROR # 10*, Application By Plaintiffs-Relators For Writs Of Certiorari And Mandamus, Documents Lodged With Clerk By Respondents, Vol. II, §O. Having ruled that no cause of action exists, the state courts could not have ruled that a cause of action prescribed.

Misstatement Of The Case No. 3: State Brief (p.18):

> Thus, as the case was heard by the Fifth Circuit and reviewed on application for certiorari to the Louisiana Supreme Court, there was no statutory authorization for the return of the money so as to provide the basis for a mandamus or mandatory injunction which would defeat judicial immunity.

Correction To Misstatement No. 3: Act 158 of 1989, *Old Jefferson Statute,* (Appendix to Writ Application, p.A-16):

> The fee herein collected shall be refunded to the defendant if he is determined to be not guilty or if the charges are dismissed.

Misstatement Of The Case No. 4: State Brief (p.10):

> No quasi contractual claims are asserted in this matter.

Correction To Misstatement No. 4: State Court Petition, ¶ XIX, Documents Lodged With Clerk By Respondents, Vol. 1,§ A

> Your plaintiffs . . . . are entitled to be reimbursed and the defendants . . . . are, jointly and in solido obligated, with the State of Louisiana, under Louisiana Civil Code Article 2301 to make restitution of the monies paid and vacate the promises made, which were unconstitutionally extorted from said Plaintiffs.

Article 2301 is a quasi contractual cause of action contained in Title V of the Louisiana Civil Code entitled "OF QUASI CONTRACTS, AND OF OFFENSES AND QUASI OFFENSES." This cause of action is discussed at length in Reply Brief On Behalf Of All Plaintiffs/Appellants, Documents Lodged With Clerk By Respondents, Vol. II, §M.

Misstatement Of The Case No. 5: McGlinchey Brief (p.8):

> If plaintiffs have any claims at all, which is denied, they should have submitted these claims to the Louisiana Board of Tax Appeals as asserted by the Appellate Court.

McGlinchey Brief (p.11):

> Thus, the petitioners erroneously assert that Louisiana has failed to provide any means to obtain a refund. La. Rev. Stat. § 47:1401, *et seq.*, clearly provides for a process in which an individual can make a claim against the State of Louisiana before the Louisiana Board of Tax Appeals to obtain a refund.

Correction To Misstatement No. 5: Louisiana Fifth Circuit Court of Appeal (Appendix to Writ Application, p.A-10):

> Plaintiffs have not cited, and we have not discovered, any statute under which the legislature has authorized suits against the state for refund of such a tax.

The state courts held that, because of judicial and sovereign immunity, there is and was no cause of action available to petitioners to obtain a return of their confiscated money.

Misstatement Of The Case No. 6: State Brief (p.6, fn 4):

> A long line of civil cases mandates that the Louisiana Supreme Court not decide **unnecessary** constitutional issues and not take up **redundant** issues.

Correction To Misstatement No. 6: The Louisiana Supreme Court remanded State v. Jones, 586 So.2d 521 (La. 1991) with the exact same federal constitutional issues involving a return of the 2% charge under the Orleans Parish Statute to "decide the constitutional issues raised." The Orleans Judiciary returned Jones' money to moot that matter and the state courts have refused to comment on, let alone decide, the same federal constitutional issues in petitioners' case. When did the federal constitutional issues become ***unnecessary*** and ***redundant***?

Misstatement Of The Case No. 7: State Brief (p.1):

> However, the Court (*sic*, the federal court in Augustus v. Roemer, 771 F.Supp. 1458 (E.D.La. 1991) was silent on plaintiffs' request for return of the 2% fees already collected. A final judgment was entered on July 24, 1991. No motion for **reconsideration** or **clarification** of the "return the money already collected" issue was filed, nor was a motion for new trial ever filed.

Correction To Misstatement No. 7: This statement is half of the truth but misleading as stated. The issue of return of the money was not put at issue before the federal court. The federal judgment stated that "the parties have stipulated that this portion of the case would only involve the facial constitutional challenge." Augustus v. Roemer, supra, 1471fn25. Federal Rules of Civil Procedure 54(b) and 42(b) specifically authorize federal courts to enter judgment on less than all claims presented in a lawsuit. Accordingly, there was no reason for plaintiffs to request a ***reconsideration or clarification of the "return the money already collected" issue.***

The only issue before the federal court was whether to enjoin the four statutes and the plaintiffs prevailed fully and completely on that issue.

I. The Supremacy Clause Precludes A State From Using Sovereign And Judicial Immunity To Deny A Cause Of Action For The Return Of Money Confiscated In Violation Of The Fourth, Fifth, And Fourteenth Amendments.

The specific ground (and the only ground) for dismissal by the state courts was that petitioners' had no cause of action because of judicial and sovereign immunity. There are two points to be made. First, the state courts did not correctly apply the doctrines of judicial and sovereign immunity. Second, even if the state courts had properly applied those two doctrines (which is denied), the Supremacy Clause precludes a state from using immunity doctrines to bar a cause of action mandated by the federal constitution.

The Mcglinchey Brief (p.5) concedes that judicial immunity does not protect judges from injunctive relief in their administrative capacity. "The traditional immunity of judges from liability for damages for acts committed in exercise of their jurisdiction has no applicability to a contest questioning judges' administrative action . . ." Imbornone v. Early, 401 So.2d 953,955 (La. 1981). The judges confiscated and maintain control of petitioners' money. Therefore, judicial immunity does not protect the judges from a mandamus or mandatory injunction to administer the return of the money under their administrative control and custody.

The District Court Judgment held that

> the State of Louisiana under Louisiana Constitution of 1974, Art. 12, Section 10(B) has immunity from suit until such time as the legislature may authorize such an action.

Article 12, Section 10 of the Louisiana Constitution provides,:

> neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.

Petitioners' pled quasi-contractual and constitutional tort causes of action. The state courts did not mention one word about the quasi-contractual causes of action. Respondents cited tort cases in an attempt to invoke a one-year prescriptive period putting themselves in the untenable position of claiming that petitioners' cause of action is a constitutional tort for prescription purposes, but not a tort for waiver of sovereign immunity purposes.

Alas, state courts cannot be forced to correctly interpret and apply state doctrines of judicial and sovereign immunity. But neither can state courts refuse to recognize a cause of action mandated by the federal constitution by hiding behind bloated doctrines of judicial and sovereign immunity. The power of state courts to disingenuously interpret and apply immunity doctrines breaks down when the Supremacy Clause comes into play. Webb's Fab. Pharmacies, Inc. v. Beckwith, supra, held that a Florida statute which allowed a clerk of court to take possession of interest accruing on an interpleader fund deposited in the registry of a county court was a taking violative of the Fifth and Fourteenth Amendments. Would the court have held that judicial immunity reigned supreme over the Fifth Amendment if the interest had gone into a judges' discretionary fund like petitioners' money?

United States Constitution, Article VI, §2 states:

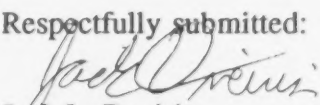
> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

If petitioners arguments are correct that the retention of their money constitutes confiscation in violation of the Fifth Amendment under Webb's Fab. Pharmacies, Inc. v. Beckwith, supra, or wrongfully seized and withheld property in violation of the Fourth Amendment under Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 87 S.Ct. 1642 (1967), or a violation of the due process and equal protection clauses of the Fourteenth Amendment, then those federal constitutional mandates reign *supreme* and *the Judges in every State shall be bound thereby.*

CONCLUSION

Petitioners have stated a cause of action for return of their money. Their petition for certiorari should be granted.

Respectfully submitted:



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